

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

STEVEN E. EDWARDS)	
)	
Petitioner,)	
)	1:12CV1378
v.)	1:05CR265-1
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

RECOMMENDATION AND ORDER
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a federal prisoner, has submitted a Motion [Doc. #181] to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. This Motion cannot be further processed because Court records reveal that Petitioner has previously attacked the same conviction and sentence in a § 2255 motion (Case No. 1:07CV501). Consequently, Petitioner must move in the Fourth Circuit Court of Appeals for an order authorizing this district court to consider the current Motion. See 28 U.S.C. § 2255; 28 U.S.C. § 2244; AO 243 (MDNC 10/07), Instructions, ¶ (4). Because of this pleading failure, this particular Motion should be filed and then dismissed.

According to Petitioner's Motion, he filed a petition for habeas relief under 28 U.S.C. § 2241 in the Eastern District of North Carolina. The Motion states further that Petitioner's § 2241 petition was denied because the Eastern District of North Carolina considered the traditional remedy under 28 U.S.C. § 2255 to be an adequate and effective vehicle to test the

legality of Petitioner's detention. Petitioner may have interpreted the denial of his § 2241 petition in the Eastern District of North Carolina as justification to file a second or successive § 2255 petition in this Court. However, as noted above, Petitioner must first move in the Fourth Circuit Court of Appeals for an order authorizing this Court to consider a second or successive § 2255 petition.

IT IS THEREFORE RECOMMENDED that this action be filed and then dismissed *sua sponte* for failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the Court of Appeals as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d).

IT IS ORDERED that the Clerk send Petitioner a copy of this Recommendation, instruction forms for filing § 2255 motions in this Court and Motions for Authorization in the Court of Appeals, and four copies of § 2255 motion forms (more copies will be sent on request). Petitioner should keep the original and two copies of the § 2255 motion which can be submitted in this Court if Petitioner obtains approval from the Fourth Circuit.

This, the 8th day of July, 2013.

/s/ Joi Elizabeth Peake
United States Magistrate Judge